Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-149911-07

Date:
March 31, 2008

LEGEND

Company =

LLC =

State =

D1 =

D2 =

D3 =

D4 =

A =

B =

C =

D =

Dear :

This letter responds to your letter dated September 28, 2007, submitted on behalf of Company, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

Company was incorporated on D1 under the laws of State and elected under § 1362(a) to be an S corporation effective on D1.

On D2, A, an individual shareholder in Company, sold all of his Company stock to LLC, an ineligible S corporation shareholder. In D3, Company learned that LLC was an ineligible S corporation shareholder and that its S corporation election had terminated on D2. Subsequently, on D4, LLC transferred Company stock to its members, B, C, and D, all of whom are individuals, in proportion to their ownership interests in LLC.

Company and its shareholders represent that the termination of its S corporation election was inadvertent and unintended. Company was unaware that LLC was an ineligible S corporation shareholder. Company and its shareholders agree to make any adjustments (consistent with the treatment of Company as an S corporation) as may be required by the Service.

LAW

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides, in part, that, for purposes of subchapter S, the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not, among other requirements, have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(d)(2)(A) provides that an election under § 1362(a) terminates whenever the corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that any termination under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in the termination were inadvertent; (3) no later than a

reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based on the facts and representations submitted by Company, we conclude that Company's S corporation election terminated on D2 when LLC acquired Company stock. We also conclude that this termination was inadvertent within the meaning of § 1362(f). Consequently, we rule that Company will continue to be treated as an S corporation from D2, and thereafter, provided that Company's S corporation election was valid and not otherwise terminated under § 1362(d).

During the termination period of D2 to D4, B, C, and D, shall be treated as the owners of Company stock in proportion to their ownership interests in LLC. Accordingly, the shareholders of Company, including B, C, and D, in determining their respective income tax liabilities during the termination period and thereafter, must include their pro rata share of the separately and nonseparately computed items of Company under § 1366, make any adjustments to stock basis under § 1367, and take into account any distributions made by Company under § 1368.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding Company's eligibility to be an S corporation.

Under a power of attorney on file with this office, we are sending a copy of this letter to Company.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

Mary Beth Collins
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:
Copy of this letter
Copy for § 6110 purposes

cc: